

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Hellen Hall
To Provide Family Child Care.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 10:30 a.m. on November 22, 2002, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401-2135. The hearing was completed by the early afternoon and the record closed at that time.

Vicki Vial-Taylor, Esq., Assistant Hennepin County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, MN 55415, appeared on behalf of the Department of Human Services. Keith Ellison, Esq., Ellison Law Office, 2000 Plymouth Avenue North, Minneapolis, MN 55411, appeared on behalf of Hellen Hall.

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have ten days to file exceptions to this report.^[1] The Commissioner's final order shall be issued within ten working days from receipt of the administrative law judge's recommendation.^[2] Because of the timelines, the parties are requested to file any exceptions as soon as possible.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license remain in effect because there reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in the license holder's care?

The Administrative Law Judge concludes that there is no longer an imminent risk of harm to children in the licensee's care.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Hellen Hall resides at 1643 Russell Avenue North, Minneapolis, Minnesota. Ms. Hall has provided day care for many years. She worked for 11 to 12 years at Survival Skills as an aide, a lead teacher, and an early childhood specialist until that organization went out of business in 1999. At that time Ms. Hall applied for and was granted a license to operate her own day care. Until September 13, 2002, Ms. Hall's license was in good standing.

2. Ms. Hall has three daughters: Takesha Keys, age 25; Rashonda Hall, age 20; and LeToya Hall, age unknown, who attends college out of state. Takesha Keys has lived at her uncle's home at 2323 Garfield Avenue South for the past five years.^[3] In the Child Care Licensing Application dated December 15, 1999, Ms. Hall stated that her daughter Rashonda Hall and granddaughter lived with her at 1643 Russell Avenue North.^[4] Ms. Hall received a background clearance notification dated January 21, 2000, providing that she, Rashonda, and LeToya were eligible to provide direct contact services. Although she was cleared to provide services, Rashonda Hall has never been a helper at Ms. Hall's day care.^[5]

3. In December 2000, Rashonda Hall moved from Ms. Hall's home to an apartment at 2216 Pleasant Avenue South, Minneapolis.^[6] In June 2001 Rashonda Hall gave birth to another child. Ms. Hall provided day care for Rashonda Hall's children, and their address is listed on her enrollment form as 2216 Pleasant Avenue South.^[7]

4. In approximately September 2001, Rashonda Hall moved out of her apartment and began living with friends.^[8] She used her mother's address as her permanent address for purposes of receiving important mail, as did her two sisters.^[9]

5. On December 31, 2001, Hellen Hall submitted another Child Care Licensing Application for purposes of renewing her license.^[10] In it she stated that she was the only adult living in her home. Ms. Hall was truthful in this application, and it contained no misrepresentations or inaccuracies.

6. In approximately July 2002, Rashonda Hall moved back into her mother's home with her two children.^[11] While there she slept in the basement, which has a bed near the laundry area normally used for folding clothes. One or both of her children slept upstairs with Ms. Hall. Ms. Hall did not report this change in household membership to her licensing worker.^[12] The basement was not used for child care.^[13] During day-care hours, Ms. Hall kept the door to the basement locked and inaccessible to children, because all cleaning products were stored in the basement.^[14]

7. At some time before August 30, 2002, the Minneapolis Police Department received information from a "confidential reliable informant" that someone named "Keshia" was selling marijuana from 1643 Russell Avenue North and that she sold and delivered marijuana from a black Expedition belonging to Ms. Hall. The informant made a "control buy" [sic] in which the informant purchased some unspecified amount of marijuana at this residence. Based on this information, the Minneapolis Police Department obtained a warrant to search the home and the vehicle.^[15]

8. On August 30, 2002, at approximately 9:30 a.m., the police executed the warrant at Ms. Hall's home. Approximately 12 children were there at the time; they waited outside while the police conducted their search. In the basement police found Rashonda Hall, as well as a metal scale, marijuana cigarette roaches, a baggie of marijuana, a pipe, and a box of baggies. They also found a knapsack in a closet, the location of which is unclear,^[16] that contained a baggie with marijuana residue and a postal scale. Marijuana seeds and marijuana were found in the ashtray of the Expedition.^[17] There is no evidence to suggest that these materials were openly scattered throughout the basement or that Ms. Hall should have known that they were there.

9. Ms. Hall cooperated with police during the search, although she was very nervous and had some breathing difficulty that required a nebulizer treatment. According to the police report, she told police that Rashonda Hall was living there at the time and that another daughter "comes and stays" and uses her vehicle from time to time.^[18] Ms. Hall denied any knowledge of drugs being sold from her home or her vehicle.

10. The police charged Ms. Hall with operating a disorderly house in violation of Minn. Stat. § 609.33.^[19] Rashonda Hall was charged with obstructing legal process and possession of a small amount of marijuana in violation of Minn. Stat §§ 152.027, subd. 4.^[20]

11. The police report relating to this incident was dictated on September 9, 2002, and was provided to the Hennepin County Childcare Licensing Unit on September 13, 2002. That day, the licensing unit recommended a temporary immediate suspension of Ms. Hall's family childcare license based on the allegations contained in the police report and the disorderly house charge made against Ms. Hall.^[21] The licensing unit also provided a copy of the police report to child protection authorities, who initiated a maltreatment investigation of Ms. Hall.^[22]

12. On September 13, 2002, the Department of Human Services issued an Order of Temporary Immediate Suspension.

13. During the course of the maltreatment investigation, a child protection investigator interviewed a number of parents of day care children who spoke highly of Ms. Hall and reported that they had never seen any drugs or drug paraphernalia in the home. Their children had never reported any concerns about drugs in the home.^[23]

14. On September 23, 2002, child protection authorities determined based on this incident that maltreatment by neglect had occurred in that Ms. Hall failed to provide necessary supervision of enrolled daycare children.^[24] Ms. Hall did not seek reconsideration of the maltreatment determination.^[25]

15. Ms. Hall had no knowledge of any drugs being used in her home or drug sales taking place from her home or her vehicle. Ms. Hall does not use drugs, believes them to be dangerous, and has long made it clear to her children that she will not tolerate them in her home.^[26] The disorderly house charge against her was dismissed on motion of the prosecutor on October 2, 2002.^[27]

16. Rashonda Hall and her children now live in Chanhassen, Minnesota. They moved out of Ms. Hall's home on November 1, 2002.

Procedural Findings

17. On September 14, 2002, Ms. Hall appealed the temporary immediate suspension of her license.^[28] The Department of Human Services received the request for appeal on September 14, 2002.^[29]

18. The County requested appointment of an administrative law judge on September 24, 2002. The Notice and Order for Hearing were mailed October 4, 2002, and the hearing date was set for October 25, 2002.

19. In the Notice and Order for Hearing, the County supplemented the basis for the temporary immediate suspension, stating that in addition to the charge against Ms. Hall, the temporary suspension was based on the charge against Rashonda Hall of obstructing legal process and possession of a small amount of marijuana.^[30]

20. On October 25, 2002, Ms. Hall's attorney sought a continuance of the hearing on the basis that he had just been retained and had a scheduling conflict that day. At his request and for good cause the hearing was continued until November 22, 2002.

21. On November 20, the County provided a "Supplemental Exhibit A" indicating that the temporary immediate suspension was further based on (1) Ms. Hall's failure to inform licensing workers concerning the change in household membership; and (2) the maltreatment/neglect determination based on the same facts alleged in suspending the license, which Ms. Hall had failed to appeal.

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subds. 2 & 3, and 14.50.

2. The Commissioner, through Hennepin County's Department of Children, Family and Adult Services, has complied with all substantive requirements. As a matter of procedure, Minn. Stat. § 245A.07, subd. 2a, requires the commissioner to request assignment of an administrative law judge within five working days of receipt of the license holder's appeal. Hennepin County did not request appointment of an

administrative law judge until September 24, 2002, or seven working days after receipt of Ms. Hall's appeal. This procedural violation was minimal and did not cause harm to the licensee.

3. If the commissioner finds that the health, safety, or rights of the children in care are in imminent danger, the commissioner shall immediately suspend the license. Minn. R. 9502.0341, subp. 9; see *also* Minn. Stat. § 245A.07, subd. 2. (if the license holder's actions pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license).

4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. Minn. Stat. § 245A.08, subd. 3.

5. If a license holder appeals an order immediately suspending a license, the commissioner must request an expedited hearing to take place within 30 calendar days of the request for assignment, unless an extension is requested and granted for good cause. Minn. Stat. § 245A.07, subd. 2a.

6. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings is limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program. Minn. Stat. § 245A.07, subd. 2a.

7. The Commissioner demonstrated reasonable cause for the temporary immediate suspension; however, the Commissioner has failed to demonstrate that the temporary immediate suspension should remain in effect pending a final order because there is a risk of imminent harm to the health and/or safety of children served by the license holder.

8. The Memorandum attached hereto is incorporated herein by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services rescind the immediate suspension of Hellen Hall's family child care license.

Dated: November 26, 2002

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (two tapes)

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2000), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Commissioner has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. This is a modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination.

The County, acting for the Commissioner, must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. Reasonable cause to suspend a license is not specifically defined in the statute, but is analogous to the probable cause standard in a criminal proceeding.^[31] In both cases the state is entitled to rely on hearsay evidence linking the license holder (or someone who resides with her) to an act that puts children in care at risk of imminent harm. "Imminent harm" is not defined in the statute or rules, but the Commissioner has defined "imminent danger" to mean that a child is threatened with immediate or present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.^[32] While this definition of imminent danger is not binding, it is instructive. At a minimum, "imminent harm" means harm that is impending or about to occur.^[33]

In this case the Department of Human Services based its decision to immediately suspend the license solely on the police reports describing the search and the controlled buy of marijuana before the search. The Administrative Law Judge received these reports over the licensee's hearsay objection because Minn. Stat. § 245A.08, subd. 3, allows the commissioner to demonstrate reasonable cause for action taken by submitting "statements, reports, or affidavits." For purposes of this licensing proceeding, the reports are sufficiently reliable hearsay evidence of the incident. The Commissioner properly made a preliminary determination, based on the reports, that

the children in care were at risk of harm, requiring an immediate temporary suspension of the child care license.

The statute requires that in an expedited hearing concerning an immediate temporary suspension, the scope of the hearing is limited to determining whether the temporary immediate suspension "should remain in effect" pending the commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.08.^[34] The Commissioner is required to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with law or rule "poses an imminent risk of harm" to children in care. The evidence that there is any risk of imminent harm today that would require the suspension to remain in effect is insufficient. The disorderly house charge against Ms. Hall was properly dismissed.^[35] Her daughter has moved out of her home, and Ms. Hall has informed both daughters that they are not to be in her home during day-care hours. The County does not believe that Ms. Hall was responsible for the presence of marijuana and paraphernalia in her home and her car, but believes that one of her daughters was responsible for it.^[36]

Nonetheless, the County maintains that the suspension should remain in effect until the County is convinced that children would not be placed in a position of imminent harm or danger in the future.^[37] This viewpoint reverses the burden of proof. It is the Commissioner's burden, through the County, to demonstrate an imminent risk of harm to children in care. The County believes it meets this burden by demonstrating that it lacks information about who is in the home, whether there are drugs in the home today, and whether Ms. Hall would be truthful in the future in reporting who is in the household.^[38] Again, to a large extent, these contentions reverse the burden of proof. The County could inspect Ms. Hall's home at any time to make its own determination on these matters, but it has not done so.

The record indicates that the County has completed its investigation and is in the process of formulating a recommendation to the Department of Human Services on the final determination.^[39] It may be entirely appropriate to take disciplinary action or impose conditions on Ms. Hall's license to ensure that her daughters are not present in the home during day-care hours, but nothing in the statute requires that the suspension remain in effect while these recommendations are formulated and provided to the Commissioner. Rather, the statute requires the County to demonstrate that the suspension should remain in effect because there is an imminent risk of harm.

In essence, the County's position is based on its lack of trust that Ms. Hall told the truth in December 2001 about who was living in the home. The Administrative Law Judge has found that Ms. Hall was truthful in statements made in her application about who was residing with her in December 2001, and there is no evidence to suggest that she would not be truthful in the future. Ms. Hall did not notify licensing authorities within 30 days when Rashonda Hall moved back home; however, failure to comply with this rule provides an inadequate basis for an immediate suspension of Ms. Hall's license. Ms. Hall cooperated completely with the investigation, she gave statements to the police and to child protection workers, and she testified during this hearing. There is

no evidence from any of these sources that Ms. Hall had any knowledge that her daughter was using or selling marijuana in her home or that Rashonda Hall would have been disqualified from being there if Ms. Hall had reported her presence in a timely manner.

The County further contends that the determination of maltreatment by neglect, and Ms. Hall's failure to seek reconsideration of it, provides an additional reason why the temporary suspension should remain in effect. The Administrative Law Judge finds no merit in this argument. The neglect determination may be binding on Ms. Hall, and it may provide a basis for disciplinary licensing action, but it was based on exactly the same facts as the temporary suspension. It provides no additional evidence of any risk of imminent harm to day-care children.

The evidence in this record is not sufficient to support a finding that Ms. Hall's actions pose an imminent risk of harm to children at this time. She has acted to remove her daughter from her home and to keep her away during day-care hours. There is no suggestion in the evidence that Ms. Hall was willfully blind to her daughter's activities or that her lack of knowledge about these activities reflects basically faulty judgment that puts children at continued risk of imminent harm.

K.D.S.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 245A.07, subd. 2a(b).

^[3] Testimony of T. Keys.

^[4] Ex. 12.

^[5] Testimony of H. Hall.

^[6] Ex. 15.

^[7] Ex. 16.

^[8] Ex. 15A.

^[9] Testimony of H. Hall.

^[10] Ex. 14; Ex. 15.

^[11] Testimony of H. Hall.

^[12] Minn. R. 9502.0375, subp. 2(A), requires providers to inform the agency of any change in regular membership of the household within 30 days.

^[13] Exs. 12, 14 (application forms indicating only first floor would be used for child care); Testimony of H. Hall.

^[14] *Id.*

^[15] Ex. 1.

^[16] According to Ex. 1, this material was found in an "upper" closet, but it is not clear if this means an upper closet in the basement or a closet in the upstairs part of the house. *See also* Ex. 20 (search warrant inventory does not specify the location from which this material was seized). In any event, the police seem convinced that the material, wherever it was, was in the possession of Rashonda Hall. Hellen Hall was not charged with possession of any marijuana.

^[17] Ex. 1.

^[18] *Id.*

^[19] *Id.*

- [\[20\]](#) Ex. 4.
- [\[21\]](#) Ex. 1.
- [\[22\]](#) Ex. 7.
- [\[23\]](#) *Id.*
- [\[24\]](#) Exs. 7, 8.
- [\[25\]](#) Ex. 9.
- [\[26\]](#) Testimony of H. Hall, T. Keys.
- [\[27\]](#) Ex. 5.
- [\[28\]](#) Ex. 3.
- [\[29\]](#) Notice of and Order for Hearing, Ex. A.
- [\[30\]](#) Ex. A, Procedural History.
- [\[31\]](#) See *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 902 (1976).
- [\[32\]](#) Minn. R. 9543.1010, subp. 8.
- [\[33\]](#) See *American Heritage College Dictionary* (3d ed.).
- [\[34\]](#) Minn. Stat. § 245A.07, subd. 2a.
- [\[35\]](#) Ms. Hall has no criminal record. The disorderly house charge requires evidence of "habitual" violations of law (*i.e.*, multiple unlawful sales of controlled substances). See Minn. Stat. § 609.33, subds. 1, 4.
- [\[36\]](#) Testimony of T. Hennessey.
- [\[37\]](#) *Id.*
- [\[38\]](#) *Id.*
- [\[39\]](#) *Id.*